

EXHIBIT 8

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3
4 NIKKI BOLLINGER GRAE, Individually
and on Behalf of All Others
5 Similarly Situated,
6 Plaintiff, Civil Action No.
7 vs. 3:16-cv-02267
8 CORRECTIONS CORPORATION OF
AMERICA, ET AL.,
9
10 Defendants.

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14 VIDEOTAPED DEPOSITION OF WILLIAM DALIUS
15
16 Conducted virtually via remote videoconference
17 October 28, 2020
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22

23 Reported by:
Misty Klapper, RMR, CRR
24 Job No.: 10073531
25

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32 ALSO PRESENT: DeSHAWN WHITE, VIDEO OPERATOR

1 P R O C E E D I N G S

2 VIDEO OPERATOR: Time on the record
3 is 10:30 a.m. Central Time. Today's date
4 is October 28, 2020. My name is DeShawn
5 White of Aptus Court Reporting. The court
6 reporter today is Misty Klapper of Aptus
7 Court Reporting, located at 600 West
8 Broadway, Suite 300, San Diego,
9 California, 92101.

10 This begins the video-recorded
11 deposition of William Dalius, testifying in
12 the matter of Nikki Bollinger Grae versus
13 Corrections Corporation of America, et al.,
14 pending in the United States District Court,
15 Middle District of Tennessee, Case Number
16 3:16-cv-02267, taken by Zoom video remote
17 conferencing, physical recording in
18 Culpeper, Virginia.

19 The video and audio recordings will
20 take place at all times during this
21 deposition unless all counsel agree to go
22 off of the record. The beginning and end of
23 each video recording will be announced.

24 Counsel appearances will be on a
25 stenographic record.

1 The court reporter may now swear in
2 or affirm the deponent.

3 MS. REPORTER: One moment.

4 Whereupon:

5 WILLIAM DALIUS,
6 was called for examination, and, after being duly
7 sworn, was examined and testified as follows:

8 MS. REPORTER: You may proceed.

9 EXAMINATION BY COUNSEL FOR PLAINTIFF

10 BY MR. LYONS:

11 Q. Good morning, Mr. Dalius. How are
12 you?

13 A. Good morning. Doing well. How are
14 you?

15 Q. Good. Thanks.

16 So you -- you recall, I assume, that
17 you -- you had your deposition taken once in this
18 case already, right?

19 A. That's correct.

20 Q. And you were under oath in that
21 deposition, right?

22 A. Correct.

23 Q. The testimony you gave was -- was the
24 whole truth and nothing but the truth; is that
25 right?

1 but it would have been shortly after I went to
2 work for them.

3 Q. Did you -- did you use that E-mail
4 address to do consulting work for your other
5 client?

6 A. No.

7 Q. So you had a separate E-mail address
8 you used for Keefe Group business?

9 A. As far as I recall, that's correct.
10 I had a Perimeter Management E -- E-mail account.

11 Q. But you -- you didn't use the
12 Perimeter Management E-mail account to consult
13 for CCA; is that right?

14 A. I -- I probably used both. Once they
15 set my account up, they asked that I utilize the
16 Core- -- or at the time CCA account, so I did.

17 Q. Now, what was your salary when you
18 started at CCA?

19 A. My -- when I was consulting or when I
20 went to work for them?

21 Q. When you went -- when you became
22 employed by CCA.

23 A. Oh, taxing my memory now. I don't
24 know the exact number, but it was probably
25 with -- my -- my -- my salary was probably

1 140,000, 150, and then I had potential to make
2 bonuses and stock awards that could be added onto
3 that.

4 Q. And did you, in fact, make or receive
5 a bonus?

6 A. I -- I -- I imagine I -- I think I
7 did when I was eligible. You've got to work a
8 year or whatever -- whatever the criteria was,
9 but I think the first year I was eligible I --
10 I -- I did and I received stock as well.

11 Q. Did you receive stock when you joined
12 or after?

13 A. No, after I earned it. I had to earn
14 it as part of the cycle.

15 Q. And then you -- you received raises
16 since -- after starting at CCA, right?

17 A. I -- I changed jobs, yes, sir.

18 Q. So your compensation stayed the same
19 the whole time you were in a -- a purchasing
20 role; is that right?

21 A. Say that again, please.

22 Q. Any -- well, first -- your first role
23 was -- was it managing director of purchasing; is
24 that right?

25 A. That's correct.

1 Q. And so your compensation stayed
2 the -- the same for the whole time you had that
3 role; is that right?

4 A. That -- that's correct.

5 Q. And then once you became -- well,
6 what was your next role?

7 A. I was vice president of facility
8 operations, which is my current role.

9 Q. And so you got a raise with that
10 role; is that right?

11 A. Yes, sir.

12 Q. And how much did you make when you
13 first became vice president of facility
14 operations?

15 A. I think my base salary is around
16 220,000 and then again with potential for bonus
17 and stock options.

18 Q. And what is it today?

19 A. It's the same.

20 Q. Same --

21 A. It may have -- it may have got
22 percentage increase with inflation.

23 Q. How much do you -- have you received
24 in bonuses since becoming vice president of
25 facility operations?

1 A. I don't know the exact amount. I'd
2 say a couple hundred thousand.

3 Q. And how much have you received in --
4 in stock awards?

5 A. Similar.

6 Q. And are you holding all of the stock
7 awards that you received or you've sold some?

8 A. I've not sold any.

9 Q. And so when you say similar, it's --
10 you mean you have roughly couple hundred thousand
11 dollars' worth of CCA stock?

12 A. I'd say that's in the ballpark, but
13 depending on -- you know, stock has gone down a
14 bit and gone up a bit, so it varies day by day,
15 depending on the rate.

16 Q. Have you ever testified at trial on
17 behalf of CCA?

18 A. No, sir.

19 Q. Other than your deposition in this
20 case, how many times have you testified at
21 deposition?

22 A. Several over my career.

23 Q. At -- in your role at CCA.

24 A. Oh. That's -- that's the only one,
25 the last time I did it.

1 the -- the appropriations subcommittee, there
2 wouldn't be one, right?

3 A. It would show up under Harley Lappin.

4 Q. Got you.

5 A. Or Kathleen Hawk.

6 Q. Do you recall my colleague
7 Ms. Radcliffe asking you in your prior deposition
8 whether you had been asked to provide an expert
9 opinion in this case?

10 A. Vaguely.

11 Q. Do you recall that you said no?

12 A. That would have been correct.

13 Q. Since your prior deposition, have you
14 been asked to provide an expert opinion in this
15 case?

16 A. If the court deems my testimony to be
17 expert, I can -- certainly with my background and
18 knowledge of 30-plus years correctional
19 experience could be potentially used as a expert
20 in this case, knowing prison operations,
21 financial operations.

22 Q. When did you first discuss the
23 possibility of your testimony being potentially
24 used as an expert in this case?

25 MR. MCGEE: Bill, I just -- you can

1 answer the question. To the extent that
2 the answer would reveal any communications
3 between you and your counsel, I would
4 advise you not to reveal the substance of
5 those communications.

6 So you -- you can answer --

7 THE WITNESS: Yeah, so -- so --

8 MR. MCGEE: -- the question from a
9 timing perspective, but not from
10 substance --

11 THE WITNESS: It would have been --
12 it would have been recently, sir.

13 BY MR. LYONS:

14 Q. Could you put a month on it?

15 A. October.

16 Q. What -- what expert opinion have you
17 been asked to provide in this case?

18 A. I've not been asked to provide an
19 expert opinion, but I can provide an expert
20 opinion on both CoreCivic and Bureau of Prisons
21 facility operations, financial operations, things
22 of that matter, considering I've got 30-plus
23 years of correctional experience and obviously a
24 lot of financial experience being the CFO of --
25 of the Federal Bureau of Prisons managing a

1 \$7 billion budget.

2 MR. LYONS: DeShawn, why don't we
3 go ahead and drop -- excuse me.

4 Why don't we go ahead and drop the --
5 T1 into the chat box, please.

6 THE WITNESS: Can I take the other
7 one down?

8 MR. LYONS: Yes, that's fine.

9 I think -- it looks like that's the
10 same link to tab 4, DeShawn. Can you -- can
11 you try again with tab 1?

12 THE WITNESS: That's what I see as
13 well.

14 VIDEO OPERATOR: My apologies. It
15 should be fixed now.

16 MR. LYONS: No problem. That looks
17 right to me.

18 MR. MCGEE: Just so we're clear,
19 Chris, tab -- we should be looking at
20 Defendants' Disclosures Pursuant to the
21 Federal Rule of Procedure 26(a)(2)(C); is
22 that right?

23 MR. LYONS: That's right.

24 MR. MCGEE: Okay. Thanks.

25

1 BY MR. LYONS:

2 Q. Have you seen this document before,
3 Mr. Dalius?

4 A. Can you just wait one second? It
5 keeps pulling my prior --

6 Q. Sure.

7 If it helps, if you look in the chat
8 box, I think it's the link that -- if you click
9 on the link that ends in 10F.

10 A. 10F.

11 Q. I don't know if you see that.

12 There's sort of two links there.

13 A. Okay. I do.

14 Q. It's the second one.

15 MR. MCGEE: Bill, this document is
16 also in the -- in the binder that my -- my
17 office sent to you today.

18 THE WITNESS: I -- I think -- it --
19 it came up. Thank you.

20 MR. MCGEE: Okay.

21 THE WITNESS: I'm -- I'm ready,
22 sir.

23 BY MR. LYONS:

24 Q. Okay. So I think my first question
25 was have you seen this document before.

1 THE WITNESS: Can you hear me now?

2 MR. MCGEE: Yeah, that's -- that's

3 better, Bill. I think it just glitched a

4 little bit, so if you want to make the

5 record clean, perhaps we could read back

6 the question and you could start your

7 answer over.

8 MR. LYONS: Would you mind doing

9 that, please, Misty?

10 MS. REPORTER: One moment.

11 (Thereupon, the record was read back

12 as requested.)

13 THE WITNESS: So -- so you want me

14 to respond now?

15 BY MR. LYONS:

16 Q. Yes, please.

17 A. Okay. I'm sorry.

18 I am not medically trained. I've had

19 the opportunity when I was a warden at the Butner

20 medical complex to oversee medical operations at

21 a -- at -- at the facility where I was a warden

22 at. So I dealt with a lot of medical issues

23 during that time, but I -- I'm not medically

24 trained.

25 Q. Did you have medical professionals

1 who were responsible for the actual provision of
2 health care?

3 A. Yes, sir.

4 Q. Now, looking at that sentence we just
5 read in Exhibit 589, it says, Mr. Dalius is
6 expected to testify about the BOP's and
7 CoreCivic's operations.

8 For what period do you expect to
9 testify about the BOP's operations?

10 A. Well, as I stated earlier, sir, I
11 worked for the BOP from 1985 to 2015. Throughout
12 that time I had been a warden -- assistant
13 warden, warden, assistant director, deputy
14 assistant director. So I held many roles over my
15 30-year career.

16 So I would base my testimony on my
17 30 years of experience in the BOP, holding and
18 assuming the -- the -- the many different roles
19 that I did.

20 Q. So you would testify about the BOP's
21 operations during the time you worked there, so
22 1985 to 2015; is that right?

23 A. That's correct. And I can generally
24 speak about prison operations today because it
25 hasn't -- prison operations have not changed

1 drastically.

2 Q. And with respect to CCA's operations,
3 you first took an operational role at CCA in --
4 in -- was it July of 2017?

5 A. It would have been August of 2000 --
6 you mean when I was a vice president?

7 Q. Yeah. When did you first take an
8 operation -- well, when did you -- well, your
9 first role at CCA was -- was purchasing, right?

10 A. That's correct, which reported --
11 in -- in the operations division.

12 Q. But you didn't have oversight of any
13 prisons in that role, right?

14 A. Not specific oversight, though we
15 dealt with the, you know, purchasing for all the
16 facilities.

17 Q. So when did you first have oversight
18 over CCA prisons?

19 A. That would have been in 2017 when I
20 became vice president.

21 Q. So for what period do you expect that
22 you would testify about CoreCivic's operations?

23 A. Well, I've known about CoreCivic's
24 operations even when I worked at the BOP because
25 the -- we -- as -- as I indicated earlier, we

1 considered our private prisons as an extension of
2 BOP prisons. So I was aware of CoreCivic
3 operations at that time. And I became probably
4 more intimately aware with daily day-to-day
5 operations when I became a vice president at
6 CoreCivic.

7 Q. Because you were not intimately aware
8 of day-to-day operations of CCA's prisons when
9 you were the CFO of the BOP, right?

10 MR. MCGEE: Object to the form of
11 the question.

12 THE WITNESS: No, sir. We had
13 staff on-site at all the private
14 facilities that monitored the day-to-day
15 operations. I would be notified if there
16 were big issues that occurred throughout
17 the facilities, whether it be a BOP
18 facility or a private facility.

19 BY MR. LYONS:

20 Q. What do you recall about the big
21 issues that you were notified about that occurred
22 at CCA's facilities while you were CFO of the
23 BOP?

24 A. I don't recall specifically issues,
25 but typically you would be notified of inmate

1 facility or a GEO facility, depending on
2 the magnitude of the issue.

3 BY MR. LYONS:

4 Q. Were you, in fact, notified of the
5 cure notice that was issued to -- to CCA with
6 respect to its Cibola prison?

7 A. When did that occur, sir?

8 Q. You're the witness, so -- it occurred
9 during your time as CFO. Do -- but do you recall
10 that happening while you were there?

11 A. I -- I don't recur (sic) specifically
12 that, no.

13 Q. Let's see. How is this?

14 Now, you see under the heading
15 number 2, Summary of Facts and Opinions, where it
16 says, Mr. Dalius may testify -- sorry.

17 You see -- you see the heading, first
18 of all?

19 A. Yes, sir.

20 Q. You see where it says, Mr. Dalius may
21 testify that CoreCivic's operational performance
22 was similar to and compared favorably with the
23 BOP's operational performance in the areas of
24 correctional facility management, oversight,
25 staffing, security and relating -- related

1 policies and procedures?

2 Do you see that?

3 A. Yes, sir.

4 Q. What's the analysis by which you
5 reached this conclusion?

6 A. So CoreCivic runs safe, secure
7 prisons, just like the BOP does. They -- they --
8 their operations are very similar to BOP
9 operations. They -- they -- the -- probably the
10 major driving -- driver -- difference is the
11 cost. It's cheaper for CoreCivic to do it than
12 it is for the Bureau of Prisons to do it.

13 But as far as actual prison
14 operations, CoreCivic runs very good prisons, as
15 does the BOP.

16 Q. Is there some quantifiable objective
17 metric by which you compared the -- the CoreCivic
18 prisons and the BOP prisons?

19 A. I wouldn't say there's quantifiable,
20 other than I've got 30 years of experience of
21 oversight of prisons, operating prisons. In the
22 BOP I currently have oversight of 22 to 25
23 prisons in my current role.

24 So I -- I've -- I've been in
25 virtually the majority of the BOP prisons. I've

1 seen how they operate. I was an AW at a low
2 security prison that -- that managed criminal
3 aliens, just like CoreCivic does. And I see very
4 similar operations in both -- both CoreCivic and
5 the Bureau of Prisons. They both run very good
6 prisons.

7 Q. But taken as a whole, looking at the
8 BOP body of prisons and the CCA-operated BOP
9 prisons, there are -- there are significant
10 differences between those sets of prisons, right?

11 A. There are differences. I would say
12 the CoreCivic prisons are more up to date, more
13 modern, more -- I'd -- I'd say clearly better
14 designs than the older -- because in the Bureau
15 of Prisons what they did with the low security
16 facilities, they were typically old medium secure
17 facilities that they managed down to low security
18 when populations grew.

19 So they're not very efficient.
20 They're not very modern, as -- as it compared to
21 the CoreCivic facilities, most of which are very
22 modern and to the new standards of constructing
23 prisons.

24 Q. Most but not all of the CCA
25 facilities are --

1 A. But the vast majority are.
2 Q. But what about populations? There
3 are significant differences between the -- the
4 BOP population and the CCA-operated BOP prison
5 population, right?

6 A. It depends on the facility. As I
7 indicated before, I was a assistant warden at
8 Fort Dix, New Jersey, where we had a predominant
9 criminal alien population, just like we manage in
10 the -- in the CoreCivic prisons and -- and all
11 the privatization prison include -- to include
12 GEO and MTC, with the exception of -- of the --
13 the District of Columbia inmates.

14 So, no, I -- I wouldn't say they're
15 totally different. There -- there are similar
16 type prisons in the BOP as are operated by
17 CoreCivic. And the -- the criminal alien
18 population is a very challenging population to
19 manage because you don't know where they're
20 coming from. You don't know their background.
21 But you're -- you're dealing with individuals
22 that, you know, as -- as compared to U.S.
23 citizens, where we know a lot about them when --
24 when they come into incarceration.

25 Q. So at Fort Dix you said it was a -- a

1 predominant criminal alien population. Was it
2 exclusively criminal alien?

3 A. No, predominant. There were -- there
4 were some -- there were some low security U.S.
5 citizens in that facility as well. It was a huge
6 prison. It was over 5,000 inmates. But the --
7 the -- I would say the bulk of the inmates were
8 criminal aliens.

9 Q. Approximately what percentage were
10 criminal aliens?

11 A. I -- I don't know the exact
12 percentage, but I would say probably 75 percent
13 maybe.

14 Q. And in -- in the CCA-operated BOP
15 prisons, 100 percent of the population is
16 criminal aliens, right?

17 A. That's correct.

18 Q. So --

19 A. I'm trying to -- I'm -- there's one
20 facility that was not, but it -- it was not a
21 CoreCivic facility. There was one that had a
22 external camp. You could not put criminal aliens
23 outside the fence.

24 Q. And so all of those -- all the
25 criminal aliens in those prisons, they're all

1 Go ahead, Bill.

2 THE WITNESS: So, yes, sir. My --
3 it's not my general sense. It's my
4 experience and knowledge of both CCA and
5 CoreCivic working for both components that
6 I'm able to do that.

7 BY MR. LYONS:

8 Q. There's no specific metric that
9 you're using, right?

10 A. No, just 34 years of experience.

11 Q. So if you wanted to, like, put up a
12 chart to show the jury how CCA prisons compare to
13 BOP-operated prisons, there's no -- there's no
14 way you could put your analysis in a chart, is
15 there?

16 MR. MCGEE: Object to the form of
17 the question.

18 THE WITNESS: Again, sir, it would
19 depend on what analysis you're looking
20 for. But if you're looking at overall
21 operational standards, the standards are
22 similar for both BOP and CoreCivic.

23 BY MR. LYONS:

24 Q. Did you perform any sort of
25 statistical analysis comparing the CCA-operated

1 prisons to the BOP-operated prisons?

2 A. No, sir.

3 Q. Did you perform any written analysis
4 of the operational performance of CCA prisons
5 compared to BOP-operated prisons?

6 A. Years ago, when I first -- when I was
7 a consultant, I prepared a financial analysis.

8 Q. And was that analysis of operational
9 performance or of costs?

10 A. Strictly costs.

11 Q. Is there any sort of scoring system
12 that you could use or you have used, rather, to
13 compare the operational performance of CCA
14 prisons to BOP prisons?

15 MR. MCGEE: Object to the form of
16 the question.

17 THE WITNESS: There is no scoring
18 system that I have.

19 BY MR. LYONS:

20 Q. Is there any system that you use to
21 compare CC -- CCA-operated prisons to
22 BOP-operated prisons that someone other than you
23 objectively could -- could test or verify your
24 conclusions?

25 MR. MCGEE: Object to the form of

1 the question.

2 THE WITNESS: My cost analysis was
3 very clear, which showed CoreCivic
4 operations are much cheaper than BOP
5 operations.

6 BY MR. LYONS:

7 Q. I'm asking you about operational
8 performance.

9 Is there any -- is there any system
10 that somebody objective could use to compare
11 CCA's operational performance to -- you know, at
12 the CCA-operated BOP prisons to BOP's operational
13 performance at the BOP-operated prisons?

14 MR. MCGEE: Object to the form of
15 the question.

16 THE WITNESS: There's -- there --
17 there is nothing that I personally
18 developed.

19 BY MR. LYONS:

20 Q. And nothing that you used either,
21 right?

22 A. In my analysis of -- of -- I mean,
23 I -- I've used my -- as I indicated before, I can
24 walk in a prison and fairly quickly walk the
25 compound, get a feel for the compound, how safe

1 the compound is based on inmates communicating
2 with you and staff communicating with you, is the
3 place clean, does the food taste good.

4 I mean, those are the types of things
5 that I base my analysis on.

6 Q. So if somebody else wanted to come in
7 and attempt to replicate your analysis, they
8 would have to walk in to the same places and just
9 see if they had the same feeling?

10 MR. MCGEE: Object to the form of
11 the question.

12 THE WITNESS: The answer to that
13 would be if you had somebody that's got
14 35 years in corrections, they could do the
15 similar thing that I do. The -- the
16 difference being is the majority of the
17 folks that would -- could do that,
18 they're -- they're rare because I've got
19 the -- the -- the luxury of having a
20 financial background, as well as an
21 operations background, to be able to
22 evaluate facilities.

23 BY MR. LYONS:

24 Q. To your knowledge, is there any
25 academic literature that supports assessing the

1 relative performance of a private prison operator
2 by trying to compare to -- to dissimilar BOP
3 facilities as opposed to comparing performance to
4 similarly -- similarly situated private
5 operators?

6 MR. MCGEE: Object to the form of
7 the question.

8 THE WITNESS: There was a --
9 when -- when the BOP initially got into
10 privatization, there was some study done
11 back either the late '80s or early '90s, I
12 don't remember who it was, and it
13 basically, I think, was inconclusive.
14 Basically saying that private prisons ran
15 as comparable to BOP prisons.

16 BY MR. LYONS:

17 Q. Was it inconclusive or it -- or it
18 reached the conclusion that you just described?

19 A. When I say inconclusive, I think
20 there were -- I -- again, I -- that was 30 years
21 ago, so I -- I'm -- I'm taxing my memory to go
22 back and figure out what the -- but that was a
23 study that was done years and years ago.

24 Q. Who authored that study?

25 A. I don't know the answer to that.

1 Q. Is there any academic literature that
2 supports assessing the relative performance of a
3 for-profit prison operator by trying to
4 compare -- well, by ignoring all of the
5 unfavorable performance criteria we just
6 discussed, such as significant findings, riots,
7 repeat deficiencies?

8 Is there any academic literature that
9 supports comparing private to government prisons
10 without looking at all of those factors?

11 MR. MCGEE: Object to the form of
12 the question.

13 THE WITNESS: Not that I'm aware
14 of.

15 BY MR. LYONS:

16 Q. To your knowledge, has anybody else
17 ever performed an analysis like -- like you have
18 apparently performed to compare operational
19 performance of private prisons and government
20 prisons?

21 MR. MCGEE: Object to the form of
22 the question.

23 THE WITNESS: I -- I don't know if
24 there's anybody else that's done that.

25

1 BY MR. LYONS:

2 Q. Other than for -- for this case, do
3 you have any experience assessing the relative
4 performance of a for-profit prison operator by
5 trying to compare to BOP-operated prisons?

6 MR. MCGEE: Object to the form of
7 the question.

8 THE WITNESS: Just the cost
9 analysis that we had done and we did every
10 year.

11 BY MR. LYONS:

12 Q. So not -- you don't have any
13 experience, other than for this case, comparing
14 the operational performance of CCA-operated
15 prisons or any private prison company-operated
16 prisons to BOP-operated prisons, right?

17 MR. MCGEE: Object to the form of
18 the question.

19 THE WITNESS: Other than ongoing
20 operational performance in the Bureau of
21 Prisons and program review teams and teams
22 that went out and assessed, but no -- no
23 third party that I'm aware of.

24 BY MR. LYONS:

25 Q. And no -- no actual comparison by you

1 either, right?

2 A. I have not done a comparison, other
3 than my being in and out of prisons and
4 understanding how prisons operate.

5 Q. To your knowledge, are there any
6 classes that teach what you've done to compare
7 the operational performance of CCA to the
8 operational performance of BOP-operated prisons?
9 Are there any classes that teach that method as a
10 sound methodology?

11 MR. MCGEE: Object to the form of
12 the question.

13 THE WITNESS: Not that I'm aware
14 of.

15 BY MR. LYONS:

16 Q. To your knowledge, are there any
17 textbooks or treatises that embrace your methods
18 as reliable?

19 MR. MCGEE: Object to the form of
20 the question.

21 THE WITNESS: Not that I'm aware
22 of, but there are a lot of criminal
23 justice classes out there I may use.

24 BY MR. LYONS:

25 Q. To your knowledge, are there any --

1 is there any publication that's ever published an
2 article applying the methodology you used to
3 compare CCA's operational performance to BOP's
4 operational performance?

5 MR. MCGEE: Object to the form of
6 the question.

7 THE WITNESS: Not that I'm aware
8 of.

9 BY MR. LYONS:

10 Q. To your knowledge, has any court ever
11 ruled that the methodology you used to compare
12 CCA's operational performance to the BOP's
13 operational performance is admissible in
14 evidence?

15 MR. MCGEE: Object to the form of
16 the question.

17 THE WITNESS: Not that I'm aware
18 of.

19 BY MR. LYONS:

20 Q. So the methodology you used is --
21 hasn't been tested by anybody else, has it?

22 MR. MCGEE: Object to the form of
23 the question.

24 THE WITNESS: I -- I don't know.

25 This is the first time I've testified.

1 BY MR. LYONS:

2 Q. Did you consider any documents in
3 forming your opinions with respect to the
4 comparison of CCA's operational performance to
5 the BOP's operational performance?

6 A. Not that I'm aware of. I -- I mean,
7 I -- I -- again, I -- I -- I -- I base my
8 analysis of the operations on actual hands-on
9 being in the facilities, seeing what they're
10 doing, both in my previous 30 years in the Bureau
11 of Prisons and my four years at CoreCivic. That
12 give -- gives me the ability to assess how
13 facilities are operating.

14 Q. But so there's -- there's no document
15 that you could -- you could hand to me and say
16 look here, here's a document that shows that
17 CCA's operational performance was similar to and
18 compared favorably with the BOP's operational
19 performance, right?

20 A. I -- I don't have a document. The
21 BOP may have documents from their program reviews
22 where -- where they assess. If you look at all
23 the BOP program reviews and the -- the reviews
24 that are done of the privatization companies,
25 they may have documents that would -- that would

1 give that comparison for you in addition to
2 having expertise review facilities.

3 Q. So they may have those documents, but
4 you don't -- if they exist you don't have them,
5 right?

6 A. I -- I would have any document --
7 or -- or I -- I would have had access to a
8 document. I don't have any documents personally,
9 but at -- at CoreCivic I would have had access to
10 whatever reviews were done.

11 Q. But you didn't actually, like, look
12 at those -- the types of documents that you're
13 describing to -- to perform some comparison of
14 CCA's operational performance to the BOP-operated
15 prisons' operational performance, did you?

16 A. Not specifically.

17 Q. Is there anything you're relying on
18 for that, other than your memory of the
19 performance of BOP prisons?

20 MR. MCGEE: Object to the form of
21 the question.

22 THE WITNESS: No, sir. But
23 30 years of working in the BOP, I've --
24 I've had a lot of --

25 (Remote transmission interference)

1 whether contract performance complies with
2 contractual requirements outside of this
3 litigation?

4 A. No, sir.

5 Q. So what expertise do you have in
6 connection with judging whether contract
7 performance complies with contractual
8 requirements?

9 A. Well, as --

10 MR. MCGEE: Object to the form of
11 the question.

12 THE WITNESS: As I've stated
13 earlier, I've got 30-plus years in the
14 Bureau of Prisons of overseeing
15 facilities. I've got four years at
16 CoreCivic overseeing facilities. I've
17 communicated with hundreds, maybe
18 thousands, of staff over the years in
19 correctional facilities, understand how
20 correctional operations work.

21 I used to train wardens in -- in --
22 in my previous roles in the BOP. So I -- I
23 believe I've got the expertise to evaluate
24 correctional operations, both -- whether it
25 be BOP or CoreCivic.

1 BY MR. LYONS:

2 Q. Did you -- did you train wardens as
3 to compliance with contractual requirements
4 between the BOP and CCA?

5 A. I did not. I trained wardens
6 specifically on cost-related items, budget-type
7 related items and any issues that they would
8 bring forward in questions.

9 Q. Did you personally conduct contract
10 facility monitoring for the BOP?

11 A. No, sir. I had procurement staff
12 that monitored facilities in the prisons that
13 worked for me.

14 Q. Are you -- are you better at judging
15 compliance with contractual requirements than the
16 procurement staff that monitored facilities in
17 the prisons?

18 MR. MCGEE: Object to the form of
19 the question.

20 THE WITNESS: I -- I don't know
21 that I'm better, but I've certainly got
22 the experience to monitor facility
23 operations, whether it be CoreCivic or
24 BOP. Having been a warden, worked in
25 facilities, had oversight of

1 122 facilities, communicated with hundreds
2 of wardens throughout my career, I've got
3 a pretty good understanding of -- of
4 facility operations.

5 BY MR. LYONS:

6 Q. So if I wanted to assess a private
7 prison operator's compliance with contractual
8 requirements, wouldn't it be a reasonable way to
9 do it to look at the actual reports generated by
10 the procurement staff that were involved in
11 contract facility monitoring?

12 A. That would be one phase of a review.

13 Q. What other phases would there be?

14 A. Well, not only do you have
15 contracting staff, you've got operational staff
16 that are in the facilities. You have people like
17 me that walk around the facilities, talk to
18 inmates, get inmate -- figure out the inmate
19 morale, staff morale, things like that that
20 occurred that are -- you're not going to find
21 in -- on many of the reports.

22 Q. And who -- who made the actual
23 determination as to any particular private prison
24 whether or not a facility was being operated in
25 compliance with contractual requirements?

1 A. Ultimately the contracting officer.

2 Q. Were you ever a contracting officer?

3 A. I was in CoreCivic.

4 Q. But not in the BOP, right?

5 A. No, sir, I did not hold a warrant.

6 Q. And in CoreCivic you didn't make the
7 determination as to whether CoreCivic was
8 complying with its contractual requirements, did
9 you?

10 A. No, I was -- I did purchasing of
11 products and services. But I supervised
12 procurement staff for 10 years in my previous
13 roles.

14 Q. Now, the same sentence we were just
15 reading also says, Mr. Dalius may also testify
16 about CoreCivic's compliance with third-party
17 standards.

18 Do you see that?

19 A. Yes, sir.

20 Q. What third-party standards are you
21 referring to here?

22 A. Things like ACA and PREA, like we
23 mentioned earlier.

24 Q. And have those third parties, the ACA
25 or PREA or any others, given you authority to

1 Q. Is there a document somewhere that
2 shows somebody telling you that we are awarding
3 this contract to GEO instead of CCA exclusively
4 because of the housing of multiple populations?

5 A. I don't know the answer to that.

6 Could be. Don't know.

7 Q. And if Mr. Hininger told CCA's board
8 of directors that one of the two reasons that the
9 CCA proposal for requirement A was unsuccessful,
10 was -- in the past performance section of our
11 proposal, concerns about our performance in
12 medical services at our Cibola, New Mexico and
13 Eden, Texas facilities were raised, was he
14 misleading the CCA board of directors?

15 MR. MCGEE: Object to the form of
16 the question.

17 THE WITNESS: I -- I can't speak
18 for Mr. Hininger. I'm not sure what he
19 told the board of directors.

20 BY MR. LYONS:

21 Q. Looking back at Exhibit 589, the
22 penultimate sentence, you see it begins with
23 Mr. Dalius may also testify that CoreCivic
24 delivers comparable correctional services at a
25 lower cost than the BOP and describe the various

1 cost components supporting that opinion?

2 A. Yes, sir, I see that.

3 Q. Do you plan to give that testimony?

4 A. Yes, sir.

5 Q. What are the cost components you plan
6 to testify about in that regard?

7 A. I -- I can tell you the major drivers
8 and the difference between cost between CoreCivic
9 and the BOP are the BOP does not include capital
10 expenditures. So if they go build a \$350 million
11 low security prison, that is not included in
12 their daily per capita that they publish to the
13 Congress.

14 BOP pensions from retirees are not
15 included in the BOP per capita. They -- they
16 average national -- what they would call
17 national-type expenses that are, like, phone and
18 postage and things that are captured nationally
19 and prorate that across the system. So it
20 could -- could -- could be off a little bit by
21 those areas. But the major drivers are the CapEx
22 things and any -- any -- when I say CapEx, the
23 construction of the facilities themselves is not
24 included, any major -- any major renovations over
25 \$10,000 would not be included in their

1 per capita, whereas with CoreCivic, we have to
2 include those in our costs. I mean, that's
3 what -- we've -- we've got to maintain -- we've
4 got to cover all of our cost of operations in
5 order to function.

6 So there -- there's -- there's a -- a
7 multitude of things that the BOP omits. If they
8 have a riot in a facility, they take those
9 expenses out against that facility. Say they had
10 a riot in a low security facility. They would
11 exclude those. If they've got a major medical
12 catastrophic -- say a guy had a heart attack,
13 went downtown and it cost 300,000 to fix the
14 heart attack or an inmate put on a med that cost
15 several hundred thousand, they -- they exclude
16 those costs.

17 And I know that because I developed
18 the per capita for the Bureau of Prisons when I
19 worked in budget execution. So it's -- it's --
20 it's really -- you can make an apples-and-apples
21 by adding those things back into BOP's
22 per capita, but the -- clearly the cost for
23 CoreCivic is much lower than it is for the BOP.

24 Q. Are there any other cost components
25 that you plan to testify about?

1 A. They would be the major components
2 that -- that have the biggest impact on -- on the
3 differences.

4 Q. So any other components you don't
5 think would have a material impact?

6 A. They would have the most material
7 impact.

8 Q. Can you think of any others that
9 would have a material impact?

10 A. Not as material as those, but the --
11 the pension and the -- the -- the construction of
12 the actual facilities and the repairs and
13 maintenance of anything over \$10,000 are -- are
14 huge components of the cost factors.

15 Q. And then what about on the CCA side
16 of the equation? What costs do you include?

17 A. Well, that's a given because BOP
18 knows exactly what they're paying for the
19 per diem. So they're all -- they're all
20 included. When we bid on a job, we've got to
21 include all of our costs.

22 Q. So the only cost to the government of
23 CCA operating a BOP prison is a per diem that the
24 government pays to CCA; is that your testimony?

25 A. That's correct. That's correct.

1 CERTIFICATE OF NOTARY

2 I, MISTY KLAPPER, the officer before
3 whom the foregoing deposition was taken, do
4 hereby certify that the witness whose
5 testimony appears in the foregoing
6 deposition was duly sworn by me; that the
7 testimony of said witness was taken by me in
8 shorthand and thereafter reduced to
9 typewriting by me; that said deposition is a
10 true record of the testimony given by said
11 witness; that I am neither counsel for,
12 related to, nor employed by any of the
13 parties to the action in which this
14 deposition was taken; and, further, that I
15 am not a relative or employee of any
16 attorney or counsel employed by the parties
17 hereto, nor financially or otherwise
18 interested in the outcome of this action.

19 Further, that if the foregoing pertains to
20 the original transcript of a deposition in a federal
21 case, before completion of the proceedings, review
22 of the transcript [X] was [] was not requested.

23 Dated: November 4, 2020



24 Misty Klapper, RMR, CRR
25 and Notary Public